App. F. IX-4

Previous References
Law 88-30-1-3

193 .
(Law)

File No. 88-30.
Serial Nos. 4-5

Later References
Law-Def no. 94 of 31
Law 20-32-1-4

(25)

General and Revenue Secretariat.

Serial Nos. Two.

Part B for December 1931.

SUBJECT.

Re- revision petition against the order passed by the Second Class Magistrate, Tarikere in Cr. Case no 66 of. 30.31 (Govt- Vs Rama Rao)- Tiger Skin case.

---

5) To The Chief Conservator of Forests

No. P3356 of 17.12.31.

Forwards a Copy of the Govt- Advocate's letter intimating that the High Court have allowed the Cr. R. P 187/30.31 and declared the tiger Skin to belong to Govt, and informing to instruct the Range Officer Concerned to take delivery of the Skin in question.

Mr- Abdul Aziz
26-12-31

Serial No.

Law/Kei file
"J-2

General Secy's order of 12/1/31 on file Law 88-30-1 (diary no 3208 of 30-31) regarding in connection with the appeal against acquittal in Tejer Mein case of Bijnor.

" I doubt if it is worth while taking the matter up to the High Court. I think however that all doubt would be removed by including in sect. 2 (5) (a) the following viz:—

" wild animals & birds, skins, heads, horns and bones " and omitting them from sect. 2 (5) (b) (iii). "

2nd Member's minutes 12/1/31

" The Magistrate's decision is clearly wrong and I see no objn. to the High Court being moved to set aside his order.

Amendment of the law as proposed by the General Secretary would require some consideration.

Submit for orders. — may the L. C. J. be asked to send up a draft bill with a statement of Objects & Reasons.?

2 The need for amending the law is not quite clear. There may be no material difference whether the words are included in clause (b) or clause (a). The decision of the High Court might perhaps be awaited.

Genl Secy) 3 J/1.—Magistrate, Bijnor, Dec 2/1/31

RG 3/2/31.

NOTE—Contn. Sheet.

5209/30

4802

File No. of 193 General and Revenue Secretariat

4

This may be sent to the Prohi Branch for ~~for reference after the High Court decides the case~~ Looking Thro

4/2

5

Linked file is returned.

To

G. M. Br. with Compts

TSD 4/2

Sus file 1/3/31

4/2

This may be sent to the Prohi Branch for favour of giving the information required in para 2 of the note.

may wait for a couple of months.

28/2

28/2

2/3

Genl Secy

2/3/31

GENERAL MISCELLANEOUS BRANCH

Sus file 1-5

2 931

Linked

Pro. Br. may be Consulted as to the disposal of the appeal in the High Court

for Br)

5/5

Govt. Advocate reports that the Revision petition was fixed on 15.1.31 and posted to 15.6.31 for Hg.

TSD 13/5

for Branch)

13/5

To Pro. Br. for kindly stating the disposal of the appeal

for Br

23/1

5209 P 3

App. F. III—2]

General and Revenue Secretariat | File No. | of 193 .

Serial No.

mr TSO

Is there any inform available in the Law Secty ? If not a reqst may be made to the Govt

DSP 28/9

Dfr enquiry is put up for appts.

TSO 25/9

Issue DSP 25/9

mr TSO

Where is the Govt's report referred to in your note of 13/5/31

DSP 25/9

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial

Mis 156/31

In reply please refer to No. 941

Tel. Address:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore 1st October *1931*.

From

The Government Advocate
in Mysore, BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
General Department, BANGALORE.

GENERAL SECRETARIAT
1 Oct 1931
No. Law 1924

Sir,

With reference to your letter No.P.1839/Law. dated the 30th September 1931, I have the honor to state that Criminal Revision Petition No.187 of 1930-31 on the file of the High Court of Mysore, (Government of Mysore VS. Rama Rao) - Birur Tiger Skin Case - came on for hearing on the 17th Ultimo and after hearing arguments, orders were reserved. The result will be intimated to you in due course, as soon as orders are pronounced.

5209/30

I have the honor to be,
Sir,
Your most obedient servant,

V. Venkatarama Iyer

Government Advocate.

CSN.

Forest report may be awaited.
This may perhaps be sent to the G.M.
for perusal & return
1SO 2/10

Fin. Sr
(Forest)

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

File No. of 193 General and Revenue Secretariat

noted and returned.

1994/31
P.831

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 335

Tel. Address :—
"JURIST," Bangalore.

Bangalore....12th November.....*1931*.

GENERAL SECRETARY
From 13 NOV. 1931
No. D4

From

The Government Advocate
in Mysore, BANGALORE.

To

The Secretary to the Government
of H.H. The Maharaja of Mysore,
General Department, BANGALORE.

Sir,

With reference to Government Order No.P.4151-2/Law. 88-30-2 dated the 13th January 1931, I have the honour to state that Criminal Revision Petition No.187/1930-31 on the file of the High Court of Mysore, (Government of Mysore VS. Rama Rao) came on for final disposal on the 11th instant, and orders were pronounced allowing the Petition by Government. The Tiger Skin in question has been declared to belong to Government and the same has been ordered to be handed over to the Range Forest Officer, for and on behalf of Government.

2. A copy of the Order has been applied for, and the same will be forwarded to Government as soon as it is received in this office.

OFFICE OF THE SECOND MEMBER OF COUNCIL
16 NOV. 1931
No. 32066

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate

4 NOV. 1931 CSN/1.

4202

2527/P

P

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

From The Govt Advocate
410 of 8/12/31
forwarding a copy of order passed in the case

Kind reference invited to para 7-12 of Law file 88-30 Copy of the order submitted for perusal.

TSD
10/12

Submitted for perusal of the Judgment of the High Court - Reference is invited to para 12 in Law file 88-30 placed below.

'T'
Flag 'C'.

(Forest member)

MP
10/12/31

OFFICE OF THE
COMMERCE COUNCIL
10 DEC 1931
No. 4569

Ku
11/12/31

For perusal & return

G M Br
(Forest)

MP
11/12

MR
14/12

(Ch. Secy)

12 DEC. 1931

For perusal.
12/12

PLS
14/12/31.

(Law Secy)

MR
14/12

SECTION
DEC 1931

Draft forwarding intimating the result of the case to the Ch Conservator of Forests

MP
14/12

Issue as revised
MP
15/12

Subd with a draft
15/12

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31.

To

The Ch. Cons of Forests

No. P. 3356 d. 17.12.31 forwarding copy of the Govt. AD's letter intimating that the H.Es have allowed the G.O.P. 187/29.31 and declared the tiger skin to belong to Govt. and informing to instruct the rangers officer Concerned to take delivery of the skin in question.

This may perhaps be transferred to G.H. for to take necessary action with reg.ce to the amendment of the law as proposed in para 11 & 12 of law file 85/30

18/1 21/12

No necessity — This may be filed now — DNP 24/1/32

B 18/1 21/12

2527/31

In reply please refer to
No. 410

Tel. Address :—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore.....8th.....December.....*19*31.

From

The Government Advocate
in Mysore, BANGALORE.

GENERAL SECRETARY
8 DEC 1931
No

To

The Secretary to the Government
of H.H.The Maharaja of Mysore,
General Department, BANGALORE.

Sir,

In continuation of this office letter No.335 dated the 12th November 1931, I have the honor to forward herewith, for the information of Government, a copy of the Order passed in Criminal Revision Petition No. 187 of 1930-31 on the file of the High Court of Mysore, (Government of Mysore, Vs. Rama Rao).

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

25-27

Appendix F G—1]

SUBJECT .....

.....

.....

Section 1 Law

File No. 88-30

Serial No. 5

Diary No. of letter replied to .....

No 3356 (1)

To The Ch. Conservator of F- in Mysore

Sir I am directed to intimate that orders in the Criminal Revision petition, 187 of 1930-31 on the file of the High Court of Mysore have on 12/11/1931 been passed setting aside the order of the lower Co

I have &c

for Secy to G-

General and Revenue Secretariat

( )

the *193*

Date of issue 17/12/31

Signed by

In continuation of Govt order No: P 4157-2/Law 88-30-2 dated 13th Jan 1931, I am directed to forward herewith Copy of Govt Advocate's letter No: 335 dated 12th Nov 1931, intimating that the High court have allowed the Cr. R. P. No 187 of 1930-31 filed by Govt, and declared the tiger skin to belong to Govt — The Range Forest officer concerned may be instructed to take delivery of the skin in question.

List of enclosures .....

Copied by .....

Examined by .....

WD 71—GPBM—40,000—20-7-31.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Wednesday, the 11th day of November 1931.

BEFORE

RAJADHARMAPRAVINA

C. C. DORAISWAMI IYER, CHIEF JUSTICE.

CRIMINAL REVISION PETITION NO.187 OF 1930-31.

Government of Mysore .. Counter-Petitioner .. PETITIONER

(By Mr.A.R.Nageswara Ayer, Government Advocate)

-Vs.-

Rama Rao Petitioner .. OPPONENT

(Absent and unrepresented).

RECORDS RETURNED.

Criminal Revision Petition against the order dated 14th November 1930 passed by the Special Second Class Magistrate of Tarikere in Criminal Miscellaneous Case No. 66 of 1930-31.

This criminal revision petition coming on for hearing on Thursday, the 17th day of September 1931, the Court pronounced the following :-

O R D E R.

This is a revision petition by Government against the order of the Special 2nd Class Magistrate, Tarikere, directing the tiger skin to be delivered to the opponent.

There is no dispute about the facts :- On 23-6-1930 while the opponent was engaged in grazing his cattle on the kaval land, a tiger suddenly appeared, and in self-defence of himself and his cattle the opponent shot the tiger and mortally wounded it. After receiving the fatal wound in the kaval land, the tiger moved on to the adjoining gomal land, and there dropped down dead. The opponent pursued the animal to the gomal land and took possession of the carcass. It is contended on behalf of Government that since the gomal land on which the tiger had dropped down dead is Government land, the opponent had no right in law to the skin of the game which he mortally wounded and pursued. The Magistrate's reasoning for holding that the skin is the property of the opponent does not appear to me to be very clear. In one place he observes that as the gomal land belonged to the villagers and not to Government, he was unable to hold that the animal was killed on the property of Government, and that the property in the carcass vested in Government. In another place he holds that property in animals ferae naturae belongs to the person who completely captures and brings it under control. There is again another observation, that inasmuch as the opponent had removed the carcass to his house, and stripped off the skin there, the Forest Range Officer had no right right either to seize the skin or demand its restoration to Government. In the end he winds up by saying that as the beast died on gomal land of the villagers, it cannot be the property of Government.

I do not think there is room for much doubt as regards the law on the subject. The leading case in England is Blades Vs. Higgs (1865) 11 H.L.C.622. leaving two other rights by which property ~~inheres~~ in ferae

ferae naturae exists or is acquired Lord Westbury, L.C. refers to rationae soli and rationae privilegie by which the right exists. Property rationae soli is the common law right which every owner of land has to kill and take all such animals ferae naturae as may from time to time be found upon his land, and as soon as this right is exercised, the animal so killed or caught becomes the absolute property of the owner of the soil. Property rationae privilegii is the right which, by a peculiar franchise anciently granted by the crown in virtue of its prerogative, one man had of killing and taking animals ferae naturae on the land of another, and in like manner the game when killed or taken by virtue of the privilege, became the absolute property of the owner of the franchise, just as in the other case it became the absolute property of the owner of the soil.

The Lord Chancellor then proceeded to settle a proposition of law in the form of question and answer thus :-

> "The question in the present case is whether game found killed, and taken upon my land, by a trespasser becomes my property as much as if it had been killed and taken by myself, or my servant by my authority. Upon - principle there cannot I conceive be much difficulty. If property in game be made absolute by reduction into possession, such reduction must not be a wrongful act, for it would be unreasonable to hold that the act of the trespasser, that is of a wrongdoer, - should divest the owner of the soil of his qualified property in the game, and give the wrongdoer an absolute right of property to the exclusion of the rightful owner.

But

But in game, when killed and taken, there is absolutely property in some one, and therefore the property in game found and taken by a trespasser on the land of A must vest either in A, or the trespasser, and if it be unreasonable to hold that the property vests in the trespasser or wrongdoer, it must of necessity be vested in A, the owner of the soil.

This view is supported by Lord Chief Justice Holt's dictum in Sutton Vs. Mody (1 Lord Raym. 250):

> "If a A starts a hare on the ground of B, and hunts it and kills it there, the property continues all the while in B".

In the case thus put it must of course be taken that A has hunted and killed the hare without the leave or license of B, and therefore that it is a wrongful act by A which enures for the benefit of the true owner viz., B, the owner of the soil".

So far as this proposition is concerned, there is no difference of opinion, but two other propositions deducible from Chief Justice Holt's dictum in Sutton Vs. Mody are doubted.

The first is :-

> "If A starts a game in the forest or warren of B and hunts it into the grounds of C and there kills it, the property is in B, the proprietor of the chase or warren, because the privilege continues, and consequently B is entitled to the absolute property in the dead game so chased and killed by A, who from the statement of the case must be taken to have acted without the license of

B, and therefore to have been a trespasser".

The second is:

"If A starts a hare on the ground of B (who is entitled to rationae soli only, for that is plainly implied, and hunts it to the ground of C, and there kills it, the property is in the hunter; for it cannot be in B, who is entitled rationae soli only, and not rationae privilegii, for the hare is not killed upon his land; and it cannot be in C, for the game was not originally found in his possession, but was only driven upon his ground by the chase and pursuit of the hunter".

The authority and the soundness of these two propositions of law have been questioned both by Lord Westbury and Lord Chelmsford in Blades Vs. Higgs. I have already referred to the opinion of Lord Westbury. The observations of Lord Chelmsford are also worth citing. His Lordship says :--

"I have some difficulty in understanding why the wrong doer is to acquire a property in the games under the circumstances here supposed. If the animal had left the land of B, and passed into the land of C of its own free will, and had been, immediately it crossed the boundary, killed by C it would unquestionably have been his property. Why then should not the act of a trespasser to which C was no party have the same effect as to his right to the animal as if it had voluntarily quitted the neighbouring land? And why not only should B lose his right to the game and C acquire none, but the property by

by

this accident of the place where it happened to be killed, be transferred to the trespasser? It would appear to me to be more in accordance with principle to hold that if the trespasser deprived the owner of the land where the game was started of his right to claim the property by unlawfully killing it on the land of another to which he had driven it, he converted it into a subject of property for that other owner, and not for himself. * It is much more reasonable to hold that the trespasser having no right at all to kill the game, he can give himself no property in it by his wrongful act; and that as game killed or reduced into possession is the subject of property, and must belong to somebody, there can be no other owner of it, under these circumstances, but the person on whose ground it is taken or killed".

As pointed out by Lord Chelmsford, there seems to be some difference between the Roman and the common law. By the civil law the person who took or reduced into possession any a animal ferae naturae, although he might be a trespasser in so doing acquired the property in it, but this doctrine does not seem to have prevailed in common law to its full extent. With respect only to live animals, in a wild and unreclaimed state, there seems to be no difference between the civil and the common law. Blades Vs. Higgs is therefore an authority for the proposition that title to property in an animal feræ naturae created merely by the act of reducing it into possession, necessarily implies a reduction into possession effected by an act which is not in any way of a wrongful nature; such an act therefore effected by one who is at the moment a trespasser, cannot creat

a title to property. A trespasser, therefore, by unlawfully killing game on the land of another, converts it into a subject of property for the owner of the land and not for himself (See I.L.R. 4 Mad.268).

Now as regards the property in an animal wounded on the land of one pursued and captured dead in the land of another, the principle of common law laid down, as regards the other two propositions referred to above in Blades Vs. Higgs, would seem to imply that such property is in the person on whose land the animal dies, and not in the person wounding it. (See 1 Mysore Chief Court Reports 250).

Now coming to the cases in India, it may be observed that 4 Mad. 268 (1880) does not touch this question. In 15 I.C.972(1912), the accused persons who belonged to the village of A chased a wild deer, with a dog. The deer ran into the neighbouring village of B where the dog that pursued it, pulled it down. Some of the villagers of B despatched the deer with lathis. The accused claimed the carcass as theirs, and their claim was resisted by the people of the village of B who claimed it as belonging to them. From altercation they came to blows and one of each party was knocked down dead. The question of the ownership in the dead animal arose incidentally in determining the question of the right of private defence set up by the accused. In deciding the right of the parties, the learned Judges observed :- "We think, that in a case of this kind the true rule is that in order to render such an animal the property of any person, there must be a complete capture, the result of which is to reduce the animal completely into possession. Mere pursuit short of capture, will not

not do, and so long as it is possible for the animal ~~xxxxxxxx~~ to escape, it cannot be said that there is such a reduction into possession as makes the animal the property of the pursuer. We think that, on the evidence there can be no doubt that in this case there was no such complete capture made by the accused. No doubt, their dog had overtaken the animal and ~~xxxxxx~~ succeeded in pulling it down, but that fact by itself did not preclude the possibility of escape, and we are satisfied that the animal really became the property of the B village people, who are proved to have despatched it with their lathies. It is not found however that the same rule would hold good even, if the animal had not been killed by the people of B village, but had died in consequence of the accusedas' dog pulling it down, or of the accused killing it after reaching the spot.

The next case of any importance is the one reported in 49 I.C.198(1919). In this case a rogue elephant which was making depredations in the forests of the feudatory chief of the Hilgiri Estate in Behar, and causing considerable damage was wounded while it was within the forest of the Raja, but the wounds inflicted upon the elephant did not cause its death. It entered the lands of the neighbouring Zamindar, and a few days thereafter the Raja's shikaris entered the lands of the Zamindar and inflicted some more wounds on it, but did not kill it. Subsequently the elephant was found dead within the limits of the Zamindari. It was contended on behalf of the Raja that inasmuch as the elephant was started in his forest and pursued into the lands of the Zamindar and there killed, the proprietory right in the dead body of the elephant was vested in the Raja, and ~~xx~~ not in the Zamindar.

Lemindar. It was held that a wild animal was the property of the person in whose forest it happened to be for the time being; that so long as it was in the forest or in the land of such person he was entitled to take it and to kill it; but when it once chose to quit his land and go into the land of another, and he ceased to have any property in it, and such wild animal became the property of that other upon whose land it entered: consequently the ~~proprietr~~ proprietory right in the dead body of the elephant, that died in the Lemindar's lands, vested in the Lemindar.

The last reported case on the subject is contained in 3 at.649 (1924). The same principle was affirmed in that decision. The head note there correctly summarises the principle thus :

> Here a person kills a wild animal on the property of another, the carcass does not belong to the killer but to the proprietor of the property and the latter either himself or by his duly authorised agent, is entitled to demand and, if refused, seize the carcass from the possession of the killer: and such persons as help him to exercise his right are doing no wrong; but as against any - person other than the proprietor of the estate or his authorised agent, or those lawfully helping the proprietor or his agent, the killer has a right to retain possession of the carcass".

Applying these principles to the present case, I must hold that if the gomal land which the wounded tiger entered is the property of Government, its skin should belong to Government; if on the other hand, it is not the property of Government, then the opponent is entitled to keep the skin as against any person other than the proprietor of the land. The Magistrate in this case has held that the gomal land was the property of the - villagers and not of Government.

It is contended on behalf of Government that gomal lands attached to unalienated villages are lands at the disposal of Government, and the proprietory interest therein, apart from the right of pasturage ~~does not vest in the villagers~~ does not vest in the villagers. According to Section

In clause (9) of the Forest Regulation 1900 "land at the disposal of Government" means lands in respect of which no person has acquired

(a) a permanent heritable and transferable right of use and occupancy under any law for the time being in force;

or

(b) any right created by grant or lease made or continued by, or on behalf of Government.

In the rules framed by Government in the exercise of their powers under Section 35 of the Forest Regulation for the management of District forests and other lands at the disposal of Government, lands assigned as free grazing grounds are defined as included within the lands at the disposal of Government. The fact that the animal died being thus the property of Government, its skin belongs to Government and not to the opponent. The order of the lower Court is therefore set aside, and the tiger skin in question is directed to be delivered to the Forest Range Officer for and on behalf of Government.

Sd/- C. S. Srinivasa Iyer,
CHIEF JUSTICE.

"Copy"

TKV/7.

By: Registrar
doing duty as Registrar

13

16th Decr.1931

The

The Chief Conservator of Forests in Mysore,
Bangalore.

In continuation of Government Order No.P.4151-2/Law 88-30-2 dated 13th January 1931, I am directed to forward herewith copy of Government Advocate's letter No.335 dated 12th November 1931 intimating that the High Court have allowed the Criminal Revision Petition No.187 of 1930-31 filed by Government, and declared the tiger skin to belong to Government.

The Range Forest Officer concerned may be instructed to take delivery of the skin in question.

I have the honor to be,
Sir,
Your most obedient servant,

for General Secretary to Government.

B.K.M.